

Docket 5

EX PARTE OR LATE FILED



Federal Communications Commission  
Washington, D.C. 20554

MAY 20 1996

RECEIVED

MAY 23 1996

ATTENTION: PUBLIC AFFAIRS DIVISION  
FEDERAL COMMUNICATIONS COMMISSION

The Honorable Bob Graham  
United States Senator  
Post Office Box 3050  
Tallahassee, Florida 32315

Dear Senator Graham:

Thank you for the letter dated April 30, 1996, on behalf of your constituent, Stewart W. Hurst, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. Mr. Hurst expresses concern regarding the Commission's decision to redesignate the 800 MHz General Category Pool frequencies. Mr. Hurst also expresses concern about the proposed use of competitive bidding procedures to award future licenses on these frequencies.

On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the General Category. In the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees using General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. Existing non-SMR licensees on General Category channels will continue to operate under their current authorizations, however, and will be fully protected from interference by new SMR licensees. In addition, the Commission's decision specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. As a result, we anticipate that the First Report and Order will make more spectrum available for licensees such as Mr. Hurst, who are currently eligible, and will continue to be eligible, to apply in the Business and Industrial/Land Transportation categories. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses

No. of Copies rec'd \_\_\_\_\_  
List ABOVE

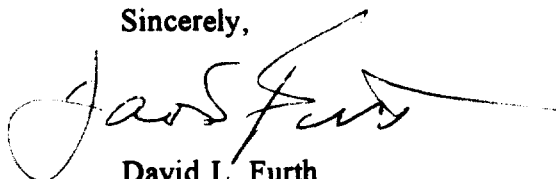
The Honorable Bob Graham

2.

satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a long horizontal flourish extending to the right.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Enclosure

BOB GRAHAM  
FLORIDA

**United States Senate**  
WASHINGTON, DC 20510-0903

April 30, 1996

*PRB  
Docket  
2321*

Ms. Judith Harris, Director  
Federal Communications Commission  
Office of Legislative Affairs  
1919 M Street, Room 808  
Washington, D.C. 20554

Dear Ms. Harris:

Enclosed is a letter from Mr. Stewart W. Hurst, Vice President of Ben Hill Griffin, Inc. of Frostproof, Florida, regarding the redesignation of the 800 MHz General Category Pool.

I would appreciate your reviewing his inquiry and providing me with your comments. Please address your reply to my state office: Post Office Box 3050, Tallahassee, Florida 32315, Attention: Becky Liner.

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

With kind regards,

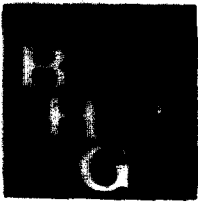
Sincerely,



United States Senator

BG/bsl

Enclosure



**Ben Hill Griffin Inc.**

FOUNDER  
B. H. GRIFFIN JR.  
(1910 - 1990)

BOX 127  
FROSTPROOF, FLORIDA  
33843

April 15, 1996

Senator Bob Graham  
524 Hart Senate Office Bldg.  
Washington DC 20510

Dear Senator Graham:

Re: FCC PR Docket No. 93-144, Redesignation of the 800 MHz General Category  
Pool to a Commercial-only Service and Proposed Implementation of Competitive  
Bidding Processes

In the above referenced proceeding, the Federal Communications Commission has reallocated 150 channels in the 800 MHz band that have been shared jointly by both private and commercial licensees for more than twenty years. The FCC's justification for this aggressive action was simply that the "overwhelming majority" of channels were used for commercial operations. In fact, while there are a significant number of commercial subscriber-based operations, there are also more than 3,400 non-commercial licensees. We happen to be one of the latter who do not use the spectrum to generate business revenues.

We do not use our frequencies to generate business revenues. Our agribusiness company utilizes the wireless radio network to carry out day to day communications among dozens of mobile and land-based personnel for citrus grove caretaking and safety needs. It is not used for sales in any way. This proceeding will adversely affect our ability to run our business as we do now, severely limiting communications within our company, and will potentially waste our \$400,000 investment in the radio system.

Now that the FCC has reclassified the band for commercial use, it has, simultaneously, provided itself authority to conduct auctions and has proposed to do so. These actions are extremely predatory to the spectrum rights that were afforded my company. We should retain a fairly reasonable expectation that - as a non-commercial entity operating a radio system in a spectrum band where there is little opportunity for mutually exclusive applications - we would not be subjected to federally forced competitive bidding processes.

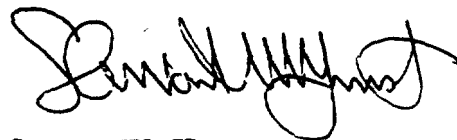
The effect of this redesignation and potential auction infringes on the existing range and function of our radio system. Our investment was made in good faith and is dependent upon fair and equitable regulatory treatment by the FCC. The FCC's disregard of the benefits that private wireless systems provide the general public and your constituents is abundantly clear from their action.

We do not support - nor do we believe you should support - FCC regulatory actions that would seem to exceed the FCC's auction authority as set forth in the Omnibus Budget Reconciliation Act of 1993. In granting authority to the FCC to award such authorizations by auction, we understood that Congress expressly limited such authority to situations involving mutually exclusive applications. Further, section 309 (j)(6)(E) of the 1993 Budget Act directed the FCC to make every effort to avoid mutually exclusive situations by use of engineering solutions, such as frequency coordination. The opportunity to generate revenues was not to be used as justification for ignoring this congressional directive.

We respectfully request that you urge the FCC to reverse its recent redesignation of the 800 MHz General Category pool. That action alone would preclude the FCC from instituting auction processes in a band that is heavily encumbered by both private and commercial licensees. We are at loss to understand federal government action that would expose our company to having to compete for spectrum through auctions when our assigned channels were validly licensed in accordance with existing policy.

Your interest and assistance will be most appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stewart W. Hurst", written in a cursive style.

Stewart W. Hurst  
Vice President  
Ben Hill Griffin, Inc.

SWH/smr